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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 DENNIS W. SOMERVILLE,

9 Petitioner,

10 v.

11 WARDEN FRAKES,

12 Respondent.  
13  
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Case No. C09-5495BHS

ORDER OVERRULING  
PETITIONER'S OBJECTIONS,  
ADOPTING REPORT AND  
RECOMMENDATION, AND  
TRANSFERRING ACTION TO  
NINTH CIRCUIT


15 This matter comes before the Court on the Report and Recommendation of the  
16 Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 6), and Petitioner's  
17 Objections to the Report and Recommendation (Dkt. 7).

18 On October 6, 2009, Judge Strombom issued a Report and Recommendation and  
19 recommended that the action should be transferred to the Ninth Circuit because Petitioner  
20 had filed a previous petition under 28 U.S.C. § 2254. Dkt. 6 at 1-2. On October 19, 2009,  
21 Petitioner filed objections arguing that the issue he brings forth now was not in his first §  
22 2254 petition. Dkt. 7 at 1. Even if the instant issue was not contained in his first § 2254  
23 petition, Petitioner must seek leave from the Ninth Circuit to file a second or successive §  
24 2254 petition. Ninth Circuit Rule 22-3(a). Therefore, the Court overrules Petitioner's  
25 objections and adopts the Report and Recommendation.  
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1 The Court having considered the Report and Recommendation, Petitioner's  
2 objections, and the remaining record, does hereby find and order:

- 3 (1) The Court **OVERRULES** Petitioner's Objections;  
4 (2) The Court adopts the Report and Recommendation; and  
5 (3) This action is administratively closed and shall be transferred to the Ninth  
6 Circuit in accordance with Circuit Rule 22-3(a).

7 DATED this 20<sup>th</sup> day of November, 2009.

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10 BENJAMIN H. SETTLE  
11 United States District Judge  
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